
INTRODUCTORY NOTE

In 1989, the United States Supreme Court, in the *City of Richmond v. J.A. Croson Co.*,¹ determined that local governments' affirmative action policies based on assumed past discrimination were no longer valid. Using a rigorous standard of scrutiny as established in *Croson*, state and local entities were required to justify race conscious programs by documenting systemic discrimination through statistical and anecdotal evidence. Just six years later in *Adarand Construction, Inc. v. Federico Pena*,² the Court held that federally funded race conscious programs would also need to satisfy the same standard of scrutiny as local and state programs.

The State of Indiana (the State) in 1997 contracted with Mason Tillman Associates, Ltd. to determine if the State's Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) programs were in compliance with the *Croson* standard. Using the State's contracting and procurement records for fiscal years 1995-1997, Mason Tillman Associates measured the effectiveness of State policies and programs in using MBEs and WBEs for the procurement of goods and services. The study provided recommendations and proposed time lines concerning continuation and enhancement of the State's MBE and WBE programs.

Mason Tillman Associates' analysis includes contract and purchasing dollars from the Indiana Department of Administration, the State Office Building Commission, the Indiana Department of Transportation, the Indiana Lottery Commission, and the Indiana Riverboat Casinos. Because the State has the ability to exempt some highly specialized industries from the minority participation goals, certain contracting and purchasing dollars awarded by the Riverboat Casinos, which are regulated by the Indiana Gaming Commission, and the Lottery Commission, were not included in the study. Although gaming equipment and maritime construction are both specialized procurements acquired by the Riverboat Casinos, they are not currently exempt.

Non-profit entities were not included in the study. The State has made considerable contributions to non-profit entities that serve or are owned by minorities and women. Nevertheless, these organizations are not within the scope or purpose of the evaluation.

The results of this study indicate that the State of Indiana's MBE and WBE programs should be continued. Our recommendation is to maintain the guidelines set forth in the State of Indiana Public Law 34-1983 and subsequent amendments.

¹488 U.S. 469 (1989).

²115 S. Ct. 2097 (1995).

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EXECUTIVE SUMMARY

CHAPTER 1: LEGAL FRAMEWORK OF MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAMS

Two Supreme Court decisions, *City of Richmond v. J.A. Croson Co.*³ and *Adarand v. Peña*,⁴ raised the standard by which federal courts will review such programs. In those decisions, the Court announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to “strict scrutiny.” An understanding of *Croson*, which applies to state and local governments, is necessary in developing sound Minority Owned Business Enterprise (MBE) and Woman Owned Business Enterprise (WBE) programs. Broad notions of equity or general allegations of historical and societal discrimination against minorities would now be insufficient to meet the requirements of the Equal Protection Clause of the Constitution. Instead, governments can adopt race-conscious programs only as a remedy for identified discrimination, and this remedy must pose a minimal burden on unprotected classes.

It has been the purpose of this State of Indiana Statistical Analysis of Utilization, from a legal standpoint, to examine the conditions that exist in the market area within which the State of Indiana operates, and to determine from an analysis of those conditions whether, pursuant to the *Croson* standard, the conditions justify the continuation of a race-conscious affirmative action program on the part of the State of Indiana.

CHAPTER 2: STATE OF INDIANA MULTI-JURISDICTIONAL MBE/WBE PROGRAM ANALYSIS

As part of the evaluation of the State of Indiana’s Minority and Women Owned Business Enterprise Program, this chapter compared the State of Indiana’s Minority Business Development (MBD) Program with the MBE/WBE programs of several other states. The purpose of this analysis was to identify the performance standards and best management practices established by MBE/WBE programs in other jurisdictions to serve as a guide for future State of Indiana (the State) program efforts.

³*City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

⁴*Adarand v. Peña*, 115 S.Ct. 2097 (1995).



Through a comparative examination of a number of other MBE/WBE programs' components, this chapter evaluated the comparative strengths and weaknesses of the State of Indiana's MBD Program. Program components under examination included policy, organizational structure, bidding and contracting procedures. Race-neutral program elements – small business enterprise programs and technical, bonding, and financial assistance – and race-conscious program elements such as goals, preferences, set-asides, and sheltered markets were also examined. The following considerations are based on *best practices* noted in the comparative examination of other state jurisdictions.

- The State should improve its use of MBE lists and general bid notification, solicitation, and advertisement in areas where MBE/WBEs are underutilized.
- Additional research is needed to determine the level of staffing required to adequately address the demands placed on the State's MBD Program. In determining staffing levels, consideration should be given to the State's number of minority owned businesses, minority population size, and annual contracting volume.
- The State should strengthen the requirements that state agencies document good faith efforts to solicit MBEs on all contracts valued at \$25,000 or less.
- The State could consider allocating more resources for pre-bid conferences and should create a debriefing process for two-way feedback between unsuccessful bidders and the procuring agency or MBD.
- To more proactively enforce its MBD Program, the State might consider implementing MBD staff training and incentive program elements.
- MBD should work with the Procurement Division to ensure that small firms, including MBE/WBEs, are targeted for small contracts. The State of Indiana should also examine Indianapolis's public-private initiatives to develop resources for MBE/WBE construction contractors.
- The State should consider expanding the direct technical assistance to MBEs in such areas as business plans, bookkeeping, recordkeeping, money management, marketing, loan and bond packaging, and other technical areas.
- The MBD and Procurement Division should develop a program to help small firms, start-up firms, and MBE/WBEs with bonding. MBD programs could mirror or be integrated into existing bonding programs administered by the Department of Commerce.



- The State should include WBEs in any prime contractor MBE preferences and subcontractor goals.

CHAPTER 3: STATE PROCUREMENT PRACTICES

In 1983, the State of Indiana Governor's Commission on Minority Business Development was created by Public Law 34. The mandate of the Commission is to explore and implement ways minority business enterprises (MBEs) may fully participate in the state contracting process and to ensure that a "good faith" effort is made to reach the legislated 5 percent MBE contracting goal. The Minority Business Development (MBD) Office implements this mandate by administering a State MBE Program. The MBD office is responsible for assisting the State in reaching the MBE contracting goal by identifying MBEs, assessing their needs, promoting their purchasing opportunities; certifying, conducting procurement workshops; matching majority businesses with minority businesses; and monitoring program compliance. The MBD Office also serves as a clearinghouse for all state agencies.

As part of this evaluation study, an assessment was performed of how well the MBE Program procurement and contracting functions are being carried out, from the perspective of those who conduct the State's business. Fifty purchasing agents and contracting officers responded to the voluntary survey. Job title categories of those responding are business administrator, purchasing administrator, director, manager, superintendent, supervisor, purchasing agent, and contract coordinator. Respondents represented 19 State agencies, including four departments, one division, three commissions, and various other agencies.

Open-ended questions were designed to elicit several types of information: The respondents' attitudes toward the MBE Program, resources and assistance they think are needed to support goal attainment, efforts they are making to further the MBE Program's intent, barriers to MBE Program participation, and suggestions for improving MBE Program effectiveness.

Based on the information collected during interviews, it is proposed that by building on the State's MBE Program successes with sufficient training, MBD resource development, and the additional changes and enhancements described below, many of the real and perceived barriers to program success can be eliminated.

- While many of the study participants recommended more aggressive outreach as a way to increase MBE identification and utilization, ethnic-specific goals have historically been the most effective way to ensure minority participation. If the evaluation study supports race-specific goals, aggressive staff training needs to be instituted to engender program acceptance and encourage performance.



- According to some survey participants, a lack of understanding of certification procedures may be effectively restricting the pool of certified MBEs. Most participants stress increased training and accessible outreach programs for both employees and entrepreneurs. For these programs to be effective, they would have to be uniform in nature and made mandatory for State employees. MBE training sessions would have to be publicly announced in easily accessible paper and electronic formats.
- The opinion of the agency representatives is that the MBD Office needs to become much more involved in outreach and business development. Toward that end, it is recommended that the following measures be considered:

- 1 The MBD Office should become more familiar with the purchasing and contracting needs of State agencies.

The MBD Office needs to learn in some detail the kinds of commodities and services that the State typically purchases and/or contracts for, so that it can encourage the development of minority businesses that will fulfill these needs.

- 2 The MBD Office should become more active in the recruitment and certification of minority owned firms.
- 3 The Directory of Certified Minority Owned Businesses should be refined.

The participants in this study have found the existing MBE Directory to contain inaccurate and out-of-date information. It is recommended that this situation be corrected by convening an internal focus group composed of State staff (perhaps the respondents to the management survey).

In addition, it is recommended that the MBD Office consider developing or adopting other classifications that might provide the kind of specific information that contracting officers and purchasing agents require. It was the opinion of one agent surveyed that the State's commodity codes do not fulfill this need.

Thirdly, it is recommended that e-mail links, references, and appropriate search/sort engines be incorporated into the database.

- 4 The State should consider women business enterprises to be minorities, as is done with other government entities in the State of Indiana.



CHAPTER 4: PRIME CONTRACTOR UTILIZATION

As set forth in *Croson* and its progeny, a utilization study must document MBE, WBE, and Disadvantaged Business Enterprises (DBE) contracting in the jurisdiction under review. The first step in the statistical analysis is to review the State of Indiana's contracting records. The objective of the utilization data analysis is to determine the State's contracting rate with MBE/WBE/DBEs, compared to non-MBE/WBE/DBEs. The specific contract categories under consideration are construction, professional services, other services and supplies.

Included in this study are contracts issued by the Indiana Department of Administration (IDOA), IDOA Public Works, the State Building Commission (SOBC), the Indiana Lottery Commission (the Lottery), the Indiana Riverboat Casinos, and the Indiana Department of Transportation (InDOT). InDOT construction and supplies contracts were analyzed separately from the other State agencies because the InDOT administers its program independently pursuant to federal DBE requirements.

The Lottery and Riverboat Casinos were also analyzed separately from the State agencies. Indiana's Riverboat Casinos are owned and operated by private entities that are responsible for all contracting necessary to support those operations.

The volume of contract dollars collected from the State, InDOT, SOBC, the Lottery Commission, and the Riverboat Casinos are presented in this chapter. In the full report, the levels of utilization are detailed for each agency and each relevant industry. Those tables are not presented in this chapter. However, levels of utilization also appear in the Statistical Analysis of Utilization chapters and tables below (Column 3 in the tables).

The study period is July 1, 1995 through June 30, 1997.

A. State Agencies

Depicted below in Table 1 are the total number of prime contracts and dollars collected from the four agencies. A total of 49,250 prime contracts totaling \$1,298,989,773 were collected from the State of Indiana (IDOA Public Works, IDOA, SOBC, and InDOT).

The State of Indiana agencies, other than InDOT, reported 44,501 prime contracts totaling \$880,648,404. Of those, construction accounted for 4.13 percent of the prime contracts, totaling \$257,546,847; professional services accounted for 1.07 percent of the prime contracts, totaling \$229,428,417; and supplies accounted for 94.8 percent of the prime contracts, totaling \$393,673,140.



InDOT reported 4,749 prime contracts totaling \$418,341,368. InDOT construction accounted for 12.07 percent of those prime contracts, totaling \$320,896,799, and InDOT supplies 87.93, totaling \$97,444,570.

**Table 1 Prime Contractor Utilization
State and InDOT Contracts and Dollars**

Type	Number of Contracts	Percentage of Contracts	Contract Dollars	Percentage of Dollars
State of Indiana (IDOA Public Works, IDOA, and SOBC)				
Construction	1,838	4.13	257,546,847	29.25
Professional Services	475	1.07	229,428,417	26.05
Supplies	42,188	94.8	393,673,140	44.70
Total	44,501	100	\$880,648,404	100
Indiana Department of Transportation (InDOT)				
Construction	573	12.07	320,896,799	76.71
Supplies	4176	87.93	97,444,570	23.29
Total	4,749		\$418,341,368	100
Grand Total	49,250	100	\$1,298,989,773	100

B. Lottery and Riverboat Casinos

Depicted below in Table 2 are the total number of prime contracts and dollars collected from the Lottery and the Riverboat Casinos. A total of 46,312 prime contracts, totaling \$672,375,214, were collected from the two entities. Of those, construction accounted for 3.64, totaling \$319,864,544; professional services accounted for 4.85 percent of the prime contracts, totaling \$56,021,861; other services accounted for 29.26 percent of the prime contracts, totaling \$147,884,231; and supplies accounted for 62.25 percent, totaling \$148,599,578.

**Table 2 Prime Contractor Utilization
Lottery and Riverboat Casinos' Contracts and Dollars**



Type	Number of Contracts	Percentage of Contracts	Contract Dollars	Percentage of Dollars
Lottery and Riverboat Casinos				
Construction	1,688	3.64	319,864,544	47.57
Professional Services	2,244	4.85	56,021,861	8.33
Other Services	13,553	29.26	147,884,231	22.00
Supplies	28,827	62.25	148,599,578	22.10
Total	46,312	100	\$672,375,214	100

CHAPTER 5: SUBCONTRACTOR UTILIZATION

Subcontractor data is important for understanding prime contractor choices in the selection of subcontractors, and it also helps evaluate the effectiveness of program activities aimed at the subcontractor level. To make valid utilization comparisons, information concerning MBE, WBE, and DBE as well as non-MBE/WBE/DBE subcontractors are needed. While most public agencies collect MBE/WBE/DBE subcontractor information because of program requirements, few are required to collect non-MBE/WBE/DBE information from prime contractors.

A. State Agencies

InDOT provided 2,367 construction subcontractor records for 505 construction prime contracts issued between July 1, 1995 and June 30, 1997. InDOT reportedly collects both DBE and non-DBE subcontracting records. To test the accuracy of InDOT's records, a survey was mailed to their construction prime contractors. They were requested to verify the use of the subcontractors listed by InDOT. Prime contractors were also asked to identify additional subcontractors used on their InDOT construction contracts, including the subcontractor's name, address, ethnicity, gender, and payment amount.

Only 141, or 27.9 percent, of the contacted 505 prime contractors responded to the survey.⁵ Of those, 22 or 15 percent of the respondents reported not using subcontractors on their

⁵Surveyers encountered a significant amount of prime contractor resistance to the survey. Most reported that surveyers were requesting information already collected by InDOT or that the information was proprietary.



InDOT construction contract. The other 119 prime contractors verified the use of all 316 of the subcontractors identified by InDOT. However, some of the prime contractors reported using an additional 55 subcontractors on the InDOT contracts and awarded subcontracts valued at \$897,796. Forty-three, or 78.2 percent, of those 55 subcontractors were Caucasian males. The balance were 10 or 18.2 percent Caucasian female and 2 or 3.6 percent Hispanic male construction business owners. Given the number of additional Caucasian male subcontractors and the low response rate to the survey, it is assumed that the subcontracting records provided by InDOT represent a significant undercount of subcontracts awarded to Caucasian male business owners. Consequently, the utilization and statistical analysis of utilization must be viewed with caution.

Because of the fewer number of subcontracts reported by IDOA (discussed below) and the low response rate to the InDOT survey, an IDOA construction prime contractor survey was not conducted.

Additional data was collected to identify missing ethnicity and gender information. That information was abstracted from the IDOA Minority Business Development Division hard copy files, from the Indiana Public Works office, and from businesses contacted to supply the missing information.

B. Lottery and Riverboat Casinos

Indiana's Lottery did not provide subcontracting records. The Riverboat Casinos reported information concerning subcontracts utilized by their prime contractors.

CHAPTER 6: MARKET AREA

It is clear from *Croson* that state and local governments must pay special attention to the geographical scope of their disparity studies. *Croson* determined that the statistical analysis should focus on the number of qualified minority individuals or qualified minority business owners in the government's marketplace.⁶

The combined number of contracts and dollar value of contracts awarded by State agencies, the State Lottery Commission, and Indiana's Riverboat Casinos during fiscal years 1995 through 1997 are summarized in the report. Most of the State's contracting dollars were spent with firms in the State. During the study period, the State awarded 95,562 contracts worth more than \$1.9 billion. Of those contracts, 52,050, or 54.47 percent, were awarded to companies located in the State. Those contracts awarded to State-based companies

⁶*Croson*, 488 U.S. 501 (1989).



represented \$1,302,427,107, or 66.07 percent of the total dollars awarded during the study period.

Construction firms in the State received \$668,141,485 or 74.38 percent of the construction dollars. Professional services firms in the State received \$208,201,757 or 72.94 percent of the professional services dollars. Supply firms in the State received \$366,733,820 or 57.33 percent of the supply contract dollars. Finally, other services firms in the State received \$59,350,045 or 40.13 percent of the supply contract dollars.

Therefore for each industry, most of the State's contracting dollars were spent with firms in the State. Thus, the State is the primary pool from which the State is drawing its contractors, and discriminatory activities that occur in the State directly impact the State's pool of firms.

CHAPTER 7: AVAILABILITY

According to *Croson*, to determine availability, MBEs, WBEs, DBEs, and non-MBE/WBE/DBEs who are willing and able to provide goods or services to the State must be enumerated. When considering sources for determining the number of willing and able MBE/WBEs and non-MBE/WBEs, the selection must be based on whether two significant aspects about the population in question can be gauged from the sources. The first criteria is a firm's interest in doing business with an entity, as implied by the term "willing." The second aspect is a firm's ability or capacity to provide a service or good, as implied by the term "able."

With respect to gauging interest and capacity, the challenge lies in finding a source that includes all construction, professional services, and supply firms as well as MBE/WBEs and non-MBE/WBEs, that are willing and able to do business with the State of Indiana.

A. State Agencies

The second aspect of the availability requirement set out in *Croson* involves the consideration of a firm's capacity.⁷ Capacity requirements were not delineated in *Croson* and the issue of capacity has only been addressed in subsequent cases that involve large and competitive bid contracts.⁸ A reasonable inference may be drawn from the court's silence. Otherwise, capacity can be presumed when a study does not involve large contracts. The

⁷ *Croson*, 488 U.S. 469 (1989).

⁸ See *Dade County*, 943 F. Supp. 1546; *AGCC v. City of Columbus*, 936 F. Supp. 1363 (S.D. Ohio 1996), *vacated* 1999 FED App. 0114P (6th Cir.).



presumption is that all willing firms in a particular industry will be able to perform smaller contracts.

As indicated in Tables 3, 4, and 5, 61.43 percent of the State construction contracts are under \$25,000, 75.40 percent are under \$100,000, and 86.27 percent are under \$300,000; therefore, there is clear evidence that limited capacity is necessary to perform *small* State construction contracts.

The tables also include the percentages of professional services and supply contracts under \$25,000, \$100,000, and \$300,000. A sufficient professional services and supply contract base exist within the bid capacity of small firms. As a result, it is not necessary to document the capacity of professional services and supply firms interested in being included in the pool of available firms.

Table 3 Percentage of Contracts Under \$25,000

Construction Prime Contracts–61.43%
Professional Services Prime Contracts–32.42%
Supplies Prime Contracts–93.01%

Table 4 Percentage of Contracts Under \$100,000

Construction Prime Contracts–75.40%
Professional Services Prime Contracts–62.74%
Supplies Prime Contracts–97.53%

Table 5 Percentage of Contracts Under \$300,000

Construction Prime Contracts–86.27%
Professional Services Prime Contracts–82.95%
Supplies Prime Contracts–98.82%



B. Lottery and Riverboat Casinos

As indicated in Tables 6, 7, and 8, 71.17 percent of the Lottery and Riverboat Casinos construction contracts were under \$25,000, 85.82 percent were under \$100,000, and 93.77 percent were under \$300,000. Therefore, there is clear evidence that limited capacity is necessary to perform *small* Lottery and Riverboat Casinos construction contracts.

Included in the tables are the percentages of professional services and supply contracts under \$25,000, \$100,000, and \$300,000. A sufficient professional services and supply contract base exists within the bid capacity of small firms. As a result, it is not necessary to document the capacity of construction, professional services, and supply firms interested in being included in the pool of available firms.

Table 6 Percentage of Contracts Under \$25,000

Construction Prime Contracts–71.17%
Professional Services Prime Contracts–89.83%
Supplies Prime Contracts–96.94%

Table 7 Percentage of Contracts Under \$100,000

Construction Prime Contracts–85.82%
Professional Services Prime Contracts–96.45%
Supplies Prime Contracts–99.04%

Table 8 Percentage of Contracts Under \$300,000

Construction Prime Contracts–93.77%
Professional Services Prime Contracts–98.40%
Supplies Prime Contracts–99.73%

C. Summary of Available Firms

The percentage distribution of firms available in the State's market area during July 1, 1995 through June 30, 1997 is summarized in Table 9. These availability percentages are used



in the statistical analysis of prime contractor and subcontractor utilization presented in the next chapter.

Table 9 Firm Availability

Ethnicity	Available Firms (Percentages)			
	Construction	Professional Services	Supplies	Other Services
MBEs	11.47	24.24	6.03	13.66
WBEs	5.93	10.7	3.41	7.88
MBE/WBE/DBEs	17.4	34.94	9.44	21.54
African Americans	8.39	16.68	4.46	10.72
Asian Pacific Americans	1.12	4.12	0.70	1.23
Hispanic Americans	1.29	2.75	0.67	1.44
Native Americans	0.67	0.69	0.20	0.28
Caucasian Males	82.60	65.06	90.56	78.46

CHAPTER 8: STATISTICAL ANALYSIS OF PRIME CONTRACTOR UTILIZATION

Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to MBE/WBE/DBEs should be equal to the proportion of available MBE/WBE/DBEs in the relevant market area. If these proportions are not equal, or if underutilization exists between these proportions, a statistical test could determine the probability that the underutilization is due to chance. If there is a very low probability that the underutilization is due to chance, the Supreme Court states that an inference of discrimination can be made.⁹

⁹When conducting statistical tests, a confidence level must be established as a gauge for determining that an observed occurrence is not due to chance. It is important to note that a 100% confidence level or a level of absolute certainty can never be obtained in statistics.



The balance of this chapter presents tables with the statistical utilization findings for the Indiana Department of Administration (IDOA), the State Office Building Commission (SOBC), the Indiana Department of Transportation (InDOT), the Indiana Lottery Commission (the Lottery), and Indiana's Riverboat Casinos (Riverboat Casinos). Also included are construction, professional services, other services, and supply contracts, as these types of work apply to each agency. The procedures for this analysis are detailed in the Prime Contractor Statistical Analysis of Utilization Chapter of the full report.

Issues of MBE/WBE/DBE capacity often arise in discussions about why MBE/WBE/DBEs do not get contracts, especially larger contracts, at the same rate as non-MBE/WBE/DBEs. To control for concerns about large contract capacity, contracts under \$300,000 are considered in this statistical analysis of utilization. Contracts at that level are accessible to most companies. Utilization under \$25,000 was also assessed to determine if MBE/WBE/DBEs get those contracts informal at the level.

The following tables summarize the utilization levels of MBE/WBE/DBEs and whether the observations are at a statically significant level. Statistically significant underutilization is marked in the tables with a "Yes" and an asterick (*).

**Table 10 Department of Administration MBE/WBE Underutilization,
Prime Contracts Under \$300,000**

Ethnicity	Type of Work		
	Construction (Public Works)	Professional Services	Supplies
African Americans	Yes*	Yes*	Yes*
Asian Pacific Americans	Yes*	Yes	Yes*
Hispanic Americans	Yes*	Yes*	Yes*
Native Americans	No	Yes	Yes
Caucasian Females	Yes	Yes*	Yes*

A 95% confidence level is considered by the courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95% confidence level.



Ethnicity	Type of Work		
	Construction (Public Works)	Professional Services	Supplies
Yes = underutilized			
No = not underutilized			
* = statistically significant underutilization			

**Table 11 Department of Administration MBE/WBE Underutilization,
Prime Contracts Under \$25,000**

Ethnicity	Type of Work		
	Construction (Public Works)	Professional Services	Supplies
African Americans	Yes*	Yes*	Yes*
Asian Pacific Americans	Yes*	No	Yes*
Hispanic Americans	Yes*	Yes	Yes*
Native Americans	Yes	Yes	No
Caucasian Females	Yes*	Yes*	Yes*

Yes = underutilized
No = not underutilized
* = statistically significant

**Table 12 State Office Building Commission MBE/WBE Underutilization,
Prime Contracts Under \$300,000
Prime Contract Dollars Under \$300,000**

Ethnicity	Type of Work		
	Construction	Professional Services	Supplies+
African Americans	Yes*	Yes*	Yes
Asian Pacific Americans	Yes	Yes	Yes
Hispanic Americans	Yes	Yes	Yes
Native Americans	No	Yes	Yes
Caucasian Females	Yes*	Yes*	Yes



Ethnicity	Type of Work		
	Construction	Professional Services	Supplies+

Yes = underutilized

No = not underutilized

* = statistically significant underutilization

+ = statistical significance could not be determined because of small contract dollar amount

**Table 13 State Office Building Commission MBE/WBE Underutilization,
Prime Contracts Under \$25,000**

Ethnicity	Type of Work		
	Construction	Professional Services	Supplies+
African Americans	Yes*	Yes*	Yes
Asian Pacific Americans	No	No	Yes
Hispanic Americans	Yes	Yes	Yes
Native Americans	Yes	Yes	Yes
Caucasian Females	Yes	Yes*	Yes

Yes = underutilized

No = not underutilized

* = statistically significant underutilization

+ = statistical significance could not be determined because of small total contract dollar amount

**Table 14 Indiana Department of Transportation DBE Underutilization,
Prime Contracts Under \$300,000**

Ethnicity	Type of Work	
	Construction	Supplies
African Americans	Yes*	Yes*
Asian Pacific Americans	Yes*	Yes*
Hispanic Americans	Yes*	Yes*
Native Americans	No	No



Ethnicity	Type of Work	
	Construction	Supplies
Caucasian Females	No	No

Yes = underutilized

No = not underutilized

* = statistically significant underutilization

**Table 15 Indiana Department of Transportation DBE Underutilization,
Prime Contracts Under \$25,000**

Ethnicity	Type of Work	
	Construction+	Supplies
African Americans	No	Yes*
Asian Pacific Americans	Yes	Yes*
Hispanic Americans	Yes	Yes*
Native Americans	Yes	Yes*
Caucasian Females	No	No

Yes = underutilized

No = not underutilized

* = statistically significant underutilization

+ = statistical significance could not be determined because of too few contracts under \$25,000

**Table 16 Indiana Lottery Commission MBE/WBE Underutilization,
All Prime Contract Dollars**

Ethnicity	Supplies
African Americans	Yes*
Asian Pacific Americans	Yes*
Hispanic Americans	Yes*
Native Americans	Yes*
Caucasian Females	Yes*

Yes = underutilized

No = not underutilized

* = statistically significant underutilization



**Table 17 Indiana Lottery Commission MBE/WBE Underutilization,
Prime Contracts Under \$25,000**

Ethnicity	Supplies
African Americans	Yes
Asian Pacific Americans	Yes*
Hispanic Americans	Yes*
Native Americans	Yes*
Caucasian Females	Yes*

Yes = underutilized
 No = not underutilized
 * = statistically significant

**Table 18 Indiana Riverboat Casinos MBE/WBE Underutilization,
All Prime Contract Dollars**

Ethnicity	Type of Work			
	Construction	Professional Services	Supplies	Other Services
African Americans	Yes*	Yes*	Yes*	Yes*
Asian Pacific Americans	Yes*	Yes*	Yes*	Yes
Hispanic Americans	Yes	No	Yes*	Yes*
Native Americans	Yes*	Yes*	Yes*	Yes*
Caucasian Females	Yes	Yes	No	Yes*

Yes = underutilized
 No = not underutilized
 * = statistically significant underutilization



**Table 19 Indiana Riverboat Casinos MBE/WBE Underutilization,
Contracts Under \$25,000**

Ethnicity	Type of Work			
	Construction	Professional Services	Supplies	Other Services
African Americans	Yes	Yes*	Yes*	Yes*
Asian Pacific Americans	Yes	Yes*	Yes*	No
Hispanic Americans	Yes*	Yes*	Yes*	Yes*
Native Americans	Yes*	Yes*	Yes	Yes*
Caucasian Females	No	No	No	Yes*

Yes = underutilized

No = not underutilized

* = statistically significant underutilization

CHAPTER 9: STATISTICAL ANALYSIS OF SUBCONTRACTOR UTILIZATION

The subcontractor statistical analysis of utilization compared the number of contracts and the amount of the contract dollars awarded to MBE/WBE/DBEs and non-MBE/WBE/DBEs with their availability in the market area. The procedures for this analysis are detailed in the Statistical Analysis of Prime Contractor Utilization Chapter. The following tables include an analysis of subcontractor contracts for fiscal years 1995 through 1997.

Only two agencies submitted subcontracting records in sufficient numbers to conduct a disparity analysis: the Indiana Department of Administration (IDOA), Public Works records, and the Indiana Department of Transportation (InDOT).



**Table 20 State of Indiana MBE/WBE/DBE Underutilization,
Construction Subcontract Dollars**

Ethnicity	Construction	
	IDOA	InDOT
African Americans	No	Yes*
Asian Pacific Americans	Yes	Yes*
Hispanic Americans	Yes	No
Native Americans	No	No
Caucasian Females	Yes*	No

Yes = underutilized

No = not underutilized

* = statistically significant underutilization

**Table 21 Riverboat Casinos MBE/WBE Underutilization,
Construction Subcontract Dollars**

Ethnicity	Construction Riverboat Casinos
African Americans	No
Asian Pacific Americans	No
Hispanic Americans	Yes
Native Americans	Yes
Caucasian Females	No

Yes = underutilized

No = not underutilized



CHAPTER 10: ANECDOTAL ANALYSIS

*Mason Tillman Associates, Ltd. May 2000
State of Indiana Statistical Analysis of Utilization
Executive Summary*

In 1989, the United States Supreme Court, in *City of Richmond v. J.A. Croson Co.*, specified the use of anecdotal testimony as a means to determine whether remedial race and gender conscious relief may be justified in a particular market area.

In this study, the primary method used to gather anecdotal testimony was oral history interviews. In-depth interviews with minority, women, and Caucasian male business owners were conducted, using open-ended questions regarding common business practices in the State's market area.

Each interview lasted approximately an hour. A total of 46 business owners were interviewed. Table 22 illustrates the composition of this group. Fourteen of the interviewees were African American, one was Asian American, one was Hispanic American, two were Native Americans, and 28 were Caucasian Americans. Fourteen were male and 32 were female. Interviewees were selected from four industry categories: construction, professional services, other services, and supplies. In addition, efforts were undertaken to verify the accounts of interviewees through the use of documentary evidence in which written, published, and archival records corroborated reported patterns and practices.

The experiences of MBE/WBE/DBEs, as depicted through this anecdotal analysis and documentary review, reveal common and consistent business barriers for those groups in the State of Indiana. Exclusionary acts limit the size and growth of minority and woman owned businesses. Table 22 summarizes those common responses, which range from limitations on financing, bonding, and insurance; to late payments of invoices; and to the many exclusionary practices of prime contractors, trade organizations, and suppliers. These latter practices include giving inadequate lead time for bidding, bid shopping, holding MBE/WBE/DBEs to higher standards of review, and harassment. Such practices, evident in both the private and public sectors, are directly linked to the slow growth of the State's minority and woman owned businesses.

Some businesses praised the State's MBE/WBE/DBE programs. However, accompanying negative responses indicate a need for serious improvement. The State needs to look at reducing bureaucracy, eliminating paperwork, providing prompt payment, and training staff on programs to improve relations with MBE/WBE/DBE contractors. Routine evaluation of program officials must be performed to hold them accountable for their performance.



Table 22 Summary of Barriers

	African Americans	Asians Americans	Hispanic Americans	Native Americans	Caucasian Females
General Barriers in the Market Area					
Stereotyping and Judgement	✓				✓
Harassment and Improper Pressure	✓				✓
Excessive Monitoring or Higher Standards of Review	✓				✓
Business Institutional Barriers					
Difficulty Obtaining Financing and Credit	✓			✓	✓
Difficulty Obtaining Bonding and Insurance	✓				✓
Canceled or Unfair Supplier Agreements	✓				
Barriers Created by Prime Contractors					
False Good Faith Efforts	✓			✓	✓
Inadequate Lead Time to Bid	✓				✓
Late Payment of Invoices	✓				✓
Difficulty Obtaining Bid Information	✓	✓	✓	✓	✓

Table 22 Summary of Barriers

	African Americans	Asians Americans	Hispanic Americans	Native Americans	Caucasian Females
Listing MBE/WBE on a Bid without Permission or Substituting MBE/WBE after Bid Award	✓				✓
Reduction in Scope of Work or Cancellation of Contract	✓				✓
Difficulty Breaking into the Contracting Network	✓				✓
Bid Shopping or Denied Contract Despite Low Bid	✓				✓
Barriers Created by the State					
Selective Public Notice of Bids	✓				
Bias in Selection Process	✓	✓			✓
Denied Contract Despite Low Bid	✓				✓
Burdensome Administrative Requirements		✓			✓
Difficulty Obtaining Bid Information	✓	✓	✓	✓	✓
Difficulty Establishing Contact and Communication with State/InDOT	✓			✓	✓
Strict MBE/WBE Requirements					✓

Table 22 Summary of Barriers

	African Americans	Asians Americans	Hispanic Americans	Native Americans	Caucasian Females
Blanket Contracts with No Purchase Orders	✓				
Difficulty Getting on the Vendor's List	✓				✓
Larger Corporations Are Favored				✓	✓
Unfair Treatment by Managers or Inspectors	✓				✓

CHAPTER 11: RACE AND GENDER NEUTRAL PROGRAMS

This report examines the race and gender neutral measures and programs used by the State of Indiana (the State). It describes strategies employed by the State which do not use race and gender classifications, such as small business programs. In addition, this report includes some practices which are targeted at women and minorities, but are not race based, such as outreach and training measures. Even though the latter are not entirely race and gender neutral, they are not subject to strict scrutiny by the judiciary because they do not unduly burden non-targeted groups.

The State has a comprehensive race-neutral program which is used to increase participation of women and minority owned businesses in contracting with the State. For the purpose of the present evaluation, the strategies used by the State have been categorized in the following seven general areas: Outreach and Training, Monitoring and Reporting, Small Business Assistance, Anti-Discrimination Requirements, and Financial Assistance. Table 23 lists the specific types of race-neutral techniques that fall under each category and indicates which techniques are utilized by the State.

CHAPTER 12: PROGRAM RECOMMENDATIONS

Recommendations have been developed for enhancements to the State of Indiana's (the State) contracting procedures generally and, more specifically, to its efforts to include minority business enterprises, women business enterprises, and disadvantaged business enterprises (MBE/WBE/DBEs) in its State contracting opportunities. Recommendations are made based on barriers to business development identified during interviews with MBE/WBE/DBEs and the consultant's experience collecting State contracting and bidding records. Recommendations are both race neutral and race conscious.

A. Prime Contractor Participation

The anecdotal analysis and the prime contractor survey indicate that MBE/WBE/DBEs encounter barriers associated with subcontracting, such as late payment from prime contractors and bid shopping, that could be alleviated if they were to participate at the prime contractor level rather than the subcontractor level. Therefore, the following recommendations are made to increase MBE/WBE/DBE participation as prime contractors.



Table 23 State of Indiana Disparity Study Race Neutral Techniques

	IDOA	InDOT	Public Works	IOSBC	Indiana Lottery Commission	Indiana's Riverboat Casinos
Outreach & Training						
Participation in Trade Shows	✓	✓	✓	✓	✓	✓
Bid Lists and Vendor Directories	✓		✓	✓	✓	✓
Pre-Bid Conferences		✓ ¹⁰	✓			
Training Sessions	✓	✓	✓	✓	✓	✓
Low Cost Business Counseling	*	✓	*	*	*	*
Technical Assistance		✓				
Monitoring and Reporting						
Contract Monitoring	✓	✓	✓	✓	✓	✓
Utilization Reporting	✓	✓	✓	✓	✓	✓
Small Business Assistance						
Divide Contracts into Smaller Units				✓		
Encourage MBE/WBE Participation	✓	✓	✓	✓	✓	✓
No "Brand Name Requirements"	**	✓ ¹¹	**	**	**	**

¹⁰Pre-bid conferences held only for unusual contracts.

¹¹Brand names not required in contracts.

Table 23 State of Indiana Disparity Study Race Neutral Techniques

	IDOA	InDOT	Public Works	IOSBC	Indiana Lottery Commission	Indiana's Riverboat Casinos
Prompt Payment Legislation	✓	✓	✓	✓	✓	✓
Small Business Goals and Preferences	✓		✓	✓	✓	✓
Simplify Contractual Language	✓		✓	✓	✓	✓
Anti-Discrimination Requirements						
State and Federal Law	✓	✓	✓	✓	✓	✓
Non-Discrimination Contract Clauses	✓	✓	✓	✓	✓	✓
Financial Assistance						
Reduce Retainage	✓	✓	✓	✓	✓	✓

* informal counseling provided

** substitutions allowed for brand names

1. Reduce Size of Contracts

Because large contracts inhibit the participation of MBE/WBE/DBEs who are smaller and not as able to participate as primes on large contracts, the State should make efforts to reduce contract size. Where multiple items are to be purchased with a single bid announcement, the State should accept bids for one or more items, and select the lowest bidder for each item, rather than one bidder for all the items.

Proposers for **architectural and engineering** contracts should be required to specify their approach to reducing the size of bid packages. Proposers should demonstrate their experience breaking out smaller bid packages. There should be an evaluation criterion for capability and experience on architectural and engineering requests for proposals/bids.

2. Direct Contracting

The State should contract directly for services like reprographics, surveying, trucking, landscaping, and elevator services which are normally within a construction contract. Firms could be prequalified and selected on a rotational basis.

3. Non-Advertised Contracts

MBE/WBE/DBEs experience statistically significant underutilization on informal contracts under \$25,000. Due to their size and relaxed bonding requirements, non-advertised contracts are accessible to MBE/WBE/DBEs who have experienced the barriers to business development discussed in the Anecdotal Analysis Chapter. These contracts offer a unique opportunity for the development of MBE/WBE/DBEs' capacity, and provide an opportunity to work directly with agency staff.

Measures should be taken to ensure that at least one MBE and one WBE is solicited for each non-advertised contract. When a bid on a contract is made, discounts should be given to MBE/WBE/DBEs.

The State should publicize its non-advertised contract opportunities to MBE/WBE/DBEs. Certified vendors should receive a list of informal contracts scheduled for bid and the list of contracts awarded.

The State should also take the following steps to track and monitor the non-advertised contract procurement process to ensure that all qualified companies are given an opportunity to participate:

- *Establish a standard method to record solicitation*



Non-advertised procurement processes should be monitored to ensure that MBE/WBE/DBEs are given a fair opportunity to bid on this work. The State should develop a standard form for its personnel to report the results of their informal solicitations. Personnel responsible for soliciting non-advertised procurements should prepare a bid tab for each informal contracting opportunity that is awarded. The form should identify all contractors contacted, along with their ethnicity and gender.

- *Rotate the contractors who are solicited for non-advertised procurement*

To ensure that the opportunities to work with the State are distributed throughout the business community, the State should rotate the contractors solicited for this work. The rotational list should include certified firms and at least one contact from a MBE and a WBE.

- *Monitor the lists of firms bidding*

Bidding activity should be tracked by computer and include the bidder's ethnicity and gender. The records that are maintained should include the reasons that companies have chosen not to bid. This will assist the State in developing strategies to increase the number of bidders if necessary.

B. Outreach

MBE/WBE/DBEs report difficulty obtaining notice of bid opportunities and exclusion from networking circles. The State should enhance its outreach methods and procedures to affect greater access to bid information. Outreach should work well if coordinated with the other State agencies.

Before an outreach program is instituted, the State should survey the MBE/WBE/DBE community to determine where and when workshops should be held to reach the greatest number of firms. The project managers or project engineers should be included in outreach efforts. They have critical information about particular projects and will be able to provide critical information to MBE/WBE/DBEs.

The State should consider the following efforts as part of its outreach program:

- *Dissemination of information*



The State should ensure that notices of bid and contract opportunities are current and are disseminated to MBE/WBE/DBEs in a timely manner. Printed notices, electronic (on-line) services, and official bulletin boards are several methods that should continue to be employed to disseminate bid and contract information to MBE/WBE/DBEs.

- *Develop an integrated bid information system*

The State could also implement a state-wide integrated information system where vendors could, on a subscription basis, obtain bid information via the e-mail, fax, or mail. Subscribers would select the commodity codes for which they receive listings.

- *Identify potential prime contractors*

The State should also consider measures that could help subcontractors identify the prime contractors they could market to if they want to work on the State projects. For example, the U.S. Small Business Administration (SBA) has printed the SBA small business subcontracting directory, which is published every two years and includes major prime contractors that offer the greatest potential for subcontracting to small businesses on federal projects.

The names of prime contractors that pick up Requests for Proposals, Requests for Quotations, construction plans or specifications should be published on the Internet. It should be made available in hard copy upon request.

- *Develop a telephone hotline*

The State could develop and maintain a contract opportunities telephone hotline. The hotline should be maintained with the most current information so that businesses may learn of new contracts listed within the last 48 hours. Emergency contracts should also be listed on the hotline. It should be regularly updated weekly on a specific day and time.

- *Debrief bidders*

The State should also expand efforts to give feedback to vendors that do not win State contracts. Staff currently respond to proposers who inquire, and bid tabulations are available for review. The State could also try to work specifically with MBE/WBE/DBE proposers or small firms in general to ensure that they receive feedback and are aware of the availability of information. Unsuccessful proposers



could also be counseled on how to strengthen their proposals in the future and to ensure that they understand the State's requirements.

I. FINANCIAL AND BONDING ASSISTANCE

The Anecdotal Chapter of the evaluation study presents a pattern of economic barriers against MBE/WBE/DBEs. Historically, minorities and women were not allowed to accumulate capital at a rate comparable to their majority counterparts. During interviews, MBE/WBE/DBEs reported considerable difficulty with financial institutions. Bonding continues to be a barrier to larger contracts and the State should consider implementing the following measures.

A. Bonding Assistance

- *Implement a bonding program*

For the preceding reasons, the State should implement a program to assist MBE/WBE/DBEs in obtaining competitive bonding. Such a program may include working with surety companies willing to work with MBE/WBE/DBEs to secure bonding at a competitive rate. The program could also assist MBE/WBE/DBEs to identify and set up the appropriate required paperwork.

This bonding assistance program could be implemented in conjunction with comprehensive technical assistance program, including management assistance, scheduling/estimating, and financial training. Companies would be required to participate in the technical assistance program in order to receive bonding assistance in these other programs in addition to the bonding program. Once companies had acquired a specific amount of experience and were eligible to be bonded at a competitive rate outside of the program, they would graduate.

- *Compile list of sureties*

The State should compile and disseminate a list of surety companies which provide competitive pricing to MBE/WBE/DBEs. In addition, the State should provide information on loan packaging programs.

- *Negotiate guarantees*

The State might negotiate guarantee agreements with a pool of local bonding and lending companies.



B. Financial Assistance

- *Offer guaranteed loans for qualifying MBE/WBE/DBEs*

A certain percentage of State-guaranteed loans should be available to MBE/WBE/DBEs meeting specific qualifications. The State could also help establish mentor relationships between project managers and target groups where loans support a contract.

- *Forge partnerships with institutions*

The State could request that banks, at which it maintains accounts, create comprehensive financing programs for small, local firms, especially MBE/WBE/DBEs. The State should forge partnerships with lending institutions to offer commercial loans and business lines of credit.

- *Provide business assistance*

The State should continue its business assistance program and provide assistance in creating business plans and in preparing financial statements and other information required by lending institutions. Such a program could be implemented in conjunction with the bonding program and the recommended small business/sheltered market program discussed above.

The State should also contract with one of the technical assistance firms in the area to provide these services.

II. COMPLIANCE

The State should take steps to ensure that contractors comply with its procedures and MBE/WBE/DBE program policy and procedures. MBE/WBE/DBEs report being substituted after being listed by the prime contractors.

A. Compliance in Bidding

- *Time for contacting subcontractors*

Prime contractors should be required to contact MBE/WBE/DBEs at least 14 calendar days before bid opening to ensure subcontractors have adequate time to prepare a bid. The State should also ensure that it advertises upcoming opportunities with sufficient advance notice for prime bidders to give adequate notice to subcontractors and small contractors to prepare their response.



- *Verification of prime contractors' reports*

Prior to contract award, information regarding the subcontractors who were contacted and the date that contact was made should be verified by contacting the subcontractors.

B. Pre-Project Meetings

Pre-project meetings with all subcontractors and prime contractors should be mandatory for projects valued over \$300,000. During these meetings, subcontractors can learn when their services are likely to be needed, about the State's prompt payment program, and any MBE/WBE/DBE program requirements of which they may not previously have been aware.

C. Compliance After Award

1. Amendments and change orders

It is important that the State continue to notify subcontractors when contracts are revised upward through amendments or change orders. Without procedures in place to inform subcontractors, they are not able to ensure that they receive an appropriate portion of the contract. When subcontractors are provided this information, they can help the State determine that an appropriate amount is being spent with MBE/WBE/DBEs.

In addition, the State should require that prime contractors include an explanation for how MBE/WBE/DBEs will be used with all change orders and amendment requests at a percentage above the contract threshold. The Compliance Office should sign-off on such requests before they are approved. All subcontractors should be notified of amendments or change orders by the State project manager.

2. Prompt Payment

Contractors commented on the difficulties suffered when agencies do not pay promptly in the Anecdotal Analysis Chapter and the interviews with prime contractors. Slow payment of invoices by a governmental agency or prime contractor can create working capital problems for many small firms, and this can also lead to difficulty in obtaining bonding and financing. MBE/WBE/DBEs may be forced to turn away projects that require them to be "out of pocket" for extended periods of time. The State should carefully monitor payments to ensure that the requirements of these provisions are being met.

- *Streamline invoice processing*



The State should consider streamlining the processing of invoices so that it pays its prime contractors within 15 days of receiving an approved invoice. Timely notice should be provided to the contractor when the State has a problem with the invoice.

- *Verify payments with subcontractors*

The State should contact subcontractors periodically throughout the life of a contract to ensure that they are being paid on a timely basis as reported.

- *Require proof of subcontractor payment*

Prime contractors that fail to pay their subcontractors timely should be required to submit proof of having made subcontractor payments before their invoices are paid.

- *Develop dispute resolution process for payments*

The State should develop a policy to expedite resolution of payment disputes. Payment disputes may be arbitrated along with other issues between prime contractors and subcontractors in order to expedite a resolution of the issues.

3. Penalties

In order to enforce compliance with the program, the State should continue its policy of progressive discipline for violations. The severity of the penalty should be raised or lowered in proportion to the severity and frequency of the offense/breach.

- *Penalize contractors if MBE/WBE/DBE subcontractors are underutilized*

The State should continue to penalize prime contractors if subcontractors are underutilized without the State's approval. Standard contract language should continue to include provisions requiring prime contractors to maintain the level of MBE/WBE/DBE participation as represented at the start of a contract.

- *Penalize for failure to comply with contract terms and conditions*

The State should fine prime contractors for non-compliance with contract terms and conditions. The State and the MBE program are injured when a contract or a portion of the contract designated for a MBE/WBE/DBE is not actually performed by a MBE/WBE/DBE. To deter unauthorized substitutions (and program non-compliance in general), the State should include provisions in the contract stipulating that in the event of a breach of contract relating to MBE/WBE/DBE



requirements, the contractor shall be responsible for liquidated damages, including the additional administrative and investigative costs of remedying such a breach.

D. Nondiscrimination Policies

The State currently includes nondiscrimination policies in bid documents and in contracts. Because policies help the State inform the business community that discriminatory activity will not be tolerated, the State should continue to include language prohibiting discrimination in contracting in all bid solicitations, RFQs, RFPs and contracts. Violation of these provisions should be a material breach of contract. The State should also take the following measure to:

- *Monitor compliance with policy*

Staff should be designated to address complaints regarding this nondiscrimination policy.

- *Institute penalties for policy violations*

Enforcement procedures should be implemented to ensure that the policies are being followed. Race and gender discrimination should be regarded as a material violation of the contract.

III. IMPROVE DATA COLLECTION SYSTEMS

State agencies were responsible for collecting and compiling the State's records of contracting with MBE/WBE/DBEs. During the data collection process, the consultant identified a number of State record keeping problems which are listed below. Recommended solutions are also provided.

A. Data Collection Coordination

The State does not have an efficient process in place for coordinating data collection, data entry, and record submission to the MBE. A large percentage of the State records did not include prime contractor addresses and award amounts. In addition, subcontractor records were incomplete.

To improve this situation, MBE should determine and communicate to State agencies the resources and reporting responsibility required to satisfy the State's need to collect utilization data on a regular basis.



B. Creating/Updating Availability List

The State's records lacked a unique identification for each vendor. For example, vendor numbers made it difficult to create a unique list of available companies. Government Tax Identification Numbers (TINs) or the social security numbers of a business owner would assist in this process. These numbers would be useful for identifying unique companies for the availability list. The State should be required to collect TINs at contract award.

IV. TRACKING AND REPORTING UTILIZATION

The State currently tracks the utilization of MBE/WBE/DBE contractors. It should continue to monitor the utilization and report actual MBE/WBE/DBE utilization by the prime contractors and subcontractors. However, it should institute a policy to collect both MBE/WBE/DBE and non- MBE/WBE/DBE participation in all State contracts.

In order to streamline the task of tracking utilization, all contracts, regardless of size, should be maintained in a centralized database. This database should include both prime contractors and subcontractors, and in order to capture true utilization, it should include actual payments. The database should be user-friendly and designed in a widely-used program such as Microsoft Access.

A. Subcontractor Tracking Procedures

While the State appears to have captured MBE/WBE/DBE subcontractor utilization data, at least at the time of contract award, it did not capture complete non-MBE/WBE/DBE data. This information is critical for developing a complete picture of subcontractor utilization, and for this reason the subcontractor utilization analysis presented in this report does not present a comprehensive assessment of subcontracting.

Sources for the subcontractor data should include:

- prime contractors' bids and proposals
- certified payroll records
- prime contractors' invoices
- project managers' records
- project engineers' records



- construction inspectors' records

The requirement to supply complete subcontractor information should be included in all contracts with prime contractors, and penalties should be levied against prime contractors who fail to furnish such information.

B. Prime Contractor Tracking Procedures

Prime contractors should be required to keep detailed records of both awards and payments to subcontractors to verify program compliance and *actual* utilization. Subcontractors should be contacted periodically to verify the information primes provide to the State. At the close of the contract, the project's prime contractors should be required to submit a report showing the final payment amounts to all subcontractors. This information should be tracked and monitored by the State.

C. Reporting Contractor Utilization

The State should continue to report on the results of its tracking process. This helps the agency measure the success of its efforts and helps it determine whether these efforts should be modified. Therefore, on at least a quarterly basis, the State needs to report awards and the actual utilization of all prime contractors and subcontractors in order to assess the effectiveness of its programs. In addition to award data, the State's reports should include payment data. In order to be most beneficial, these reports should include categories such as the method of awarding the contract, the size of the contract, and the awarding department or buyer.

All change orders, amendments, and substitutions of firms should be incorporated into the utilization reports.

